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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 JESSE MCCUNE, *et al.*,

10 Plaintiffs,

11 v.

12 WILSHIRE CREDIT CORPORATION,

13 Defendant.

Case No. C05-1511RSL

ORDER GRANTING MOTION AND  
PRELIMINARILY APPROVING  
CLASS SETTLEMENT

14  
15 **PRELIMINARY APPROVAL ORDER**

16 This matter coming before the Court on Plaintiffs' Motion for Preliminary  
17 Approval of the Settlement ("Settlement") (Dkt. #33) with Wilshire Credit Corporation  
18 ("Wilshire") pursuant to the Settlement Agreement dated March 8, 2007 between  
19 Plaintiffs and Wilshire (the "Settlement Agreement"), and the Court being duly advised in  
20 the premises by counsel for the Parties, IT IS HEREBY ORDERED THAT:  
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22 1. The Settlement proposed in the Settlement Agreement has been  
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26 ORDER GRANTING MOTION AND PRELIMINARILY  
APPROVING CLASS SETTLEMENT - 1

1 negotiated at arms-length, with the assistance of an experienced mediator, and is  
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3 preliminarily determined to be fair, reasonable, adequate, and in the best interests of the  
4 proposed settlement class for settlement purposes.

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6 2. The Court finds that the proposed Settlement is within the range of  
7 fairness and reasonableness and grants preliminary approval to it.

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9 3. The following definitions apply in this Order:

10 a) "Payoff Fee" means a fee charged by Wilshire for the service  
11 of providing borrowers with a Payoff Statement. The term includes, without limitation,  
12 fees for providing a Payoff Statement that may have been included in the category of  
13 "Unpaid Open Charges" on Payoff Statements sent by Wilshire. A "Payoff Statement" is  
14 a document provided by Wilshire, upon request, to a borrower to inform him or her of the  
total amount required to pay such borrower's loan in full, including fees and charges  
owed by the borrower at payoff.

15 b) "Postage" means the amount charged to a borrower by  
16 Wilshire to recover the cost of mailing documents in connection with satisfying or  
releasing a mortgage or reconveying property subject to a mortgage or deed of trust.

17 c) "Reconveyance Recording Charge" means the recording costs  
18 charged by Wilshire for recording an instrument in connection with the payoff of a loan  
secured by real property, including without limitation, a satisfaction of a mortgage, a  
19 reconveyance of property subject to a deed of trust, and a release of mortgage or deed or  
20 trust.

21 d) "Substitution of Trustee Recording Charge" means the  
22 recording costs for the recording of an appointment of a substitute of trustee in  
connection with a loan serviced by Wilshire.

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24 4. The Court hereby certifies a class (the "Settlement Class"), for

1 settlement purposes only, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), consisting of:

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3 All Persons with loans secured by mortgages or deeds of trust who paid off  
4 their loans between July 26, 1999 and the date of the Preliminary Approval Order, and  
5 who were charged a Payoff Fee or were charged a Substitution of Trustee Recording  
6 Charge or Postage (which may have been included in a Reconveyance Recording  
7 Charge), and whose loans were serviced by Wilshire at the time of payoff.

8 This Court finds that the class is so numerous that joinder of all members is  
9 impracticable, as there are more than 184,000 members of the class. There are questions  
10 of law or fact common to the class, including whether Wilshire properly charged the fees  
11 at issue. The claims and defenses of the representative parties are typical of the claims  
12 and defenses of the class, as Jesse and Brigitte McCune (the "McCunes") were charged  
13 and paid the fees at issue. The Court further finds that the McCunes will fairly and  
14 adequately protect the interests of the class, and they are similarly situated to absent class  
15 members. Common questions of law and fact predominate over individual issues, for  
16 purposes of this settlement, because Wilshire has agreed to waive individual defenses that  
17 might otherwise apply to Class Members. This class Settlement is a superior means for  
18 the fair and efficient resolution of this matter.  
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24 5. Pursuant to Rule 23, the McCunes are hereby preliminarily

1 designated and appointed as the representatives of the settlement class. Keller Rohrback  
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3 L.L.P., Beckett Law Offices, PLLC, and Williamson and Williams are hereby  
4 preliminarily appointed as class counsel, pursuant to Fed. R. Civ. P. 23(g). Class counsel  
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6 are experienced in class litigation, including litigation of similar claims in other cases,  
7 and will fairly and adequately represent the interests of the class.

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9 6. A hearing (the "Fairness Hearing") on the fairness and  
10 reasonableness of the Settlement Agreement and to determine whether (1) final approval  
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12 shall be given to the Settlement, (2) the requests for fees and expenses by class counsel  
13 shall be granted, and in what amount, and (3) the request for an incentive award for the  
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15 named plaintiffs shall be granted, and in what amount, will be held before this Court on  
16 July 26, 2007 at 9:00 a.m. Plaintiffs' counsel are to file their petition for attorneys' fees  
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18 and expenses by at least 14 business days prior to the final approval hearing. Plaintiffs  
19 shall also file any further papers in support of the final approval of the settlement (and  
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21 responding to any objections) by not later than 14 days prior to the final approval hearing,  
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23 and Wilshire may (but is not required to) file any papers in support of final approval by  
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25 not later than that same date. By that same date, the parties shall also file sworn  
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27 declarations from the person(s) under whose general direction the mailing of the

1 Settlement Notice was prepared and made confirming that such mailing was made and  
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3 completed in accordance with the requirements of this order.

4 No later than July 23, 2007, the parties shall submit to the Court a revised  
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6 proposed Final Judgment and Order of Dismissal that spells the Judge's name correctly,  
7 incorporates the date of the fairness hearing, and incorporates the date this order was  
8 signed.  
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10 7. The Court approves the proposed form of notice to the class in the  
11 form submitted to the Court as the Amendment to the Proposed Notice, Dkt. #40. Within  
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13 30 days after the date of this Order, Wilshire, or a third party on Wilshire's behalf, shall  
14 mail the notice describing the Fairness Hearing and the Settlement to the last known  
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16 mailing address (or such address as may be provided by the update service known as the  
17 "national change of address database" or a similar database chosen by Wilshire and  
18 counsel for the Settlement Class) of each person identified by Wilshire as being in the  
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20 Settlement Class. Wilshire, or a third party on Wilshire's behalf, shall re-mail all  
21 returned notices with forwarding addresses noted on them.  
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23 8. The form and manner for class notice fully complies with the  
24 requirements of Rule 23 of the Federal Rules of Civil Procedure and due process,  
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1 constitutes the best notice practicable under the circumstances, and provides sufficient  
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3 notice to each person entitled to notice of the settlement of this lawsuit.

4           9.       Members of the Settlement Class may exclude themselves from the  
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6 Settlement Class by submitting a written request for exclusion to counsel for the  
7 Settlement Class no later than July 5, 2007. The request for exclusion must state the  
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9 person's name and current address, must be signed by all co-obligors of the loan with  
10 respect to which such person is a Class Member, and include a statement in the form  
11 "I/We request to be excluded from the settlement class in McCune v. Wilshire." Any  
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13 member of the Settlement Class who has properly opted out of the Settlement Class shall  
14 not (i) be bound by any orders or judgments entered in this Action; (ii) be entitled to  
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16 relief under or be affected by the Settlement Agreement; (iii) gain any rights by virtue of  
17 the Settlement Agreement; or (iv) be entitled to object to any aspect of this Agreement.

18           10.     If a person in the Settlement Class wishes to have the Court consider  
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20 an objection to the Settlement, such person (1) must be and remain a member of the  
21 Settlement Class and may not exclude themselves from the Settlement Class, and (2) must  
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23 file with the Court and serve on Class Counsel and counsel for Wilshire a written  
24 objection, along with any supporting documentation that the person wishes the Court to  
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1 consider, by not later than July 5, 2007. The objecting member of the Settlement Class  
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3 shall remain fully bound by the terms of the Settlement Agreement and any eventual Final  
4 Judgment and Order of Dismissal.

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6 11. Unless they file a proper request to exclude themselves from the  
7 class pursuant to paragraph 9 of this order, plaintiffs and members of the Settlement Class  
8 are preliminarily enjoined and barred from commencing or prosecuting any action  
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10 asserting any of the Released Claims (as that term is defined in the Settlement  
11 Agreement) either directly, representatively, derivatively, or in any other capacity,  
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13 whether by a complaint, counterclaim, defense, or otherwise, in any local, state, or  
14 federal court, or in any agency or other authority or forum wherever located. Any person  
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16 or entity who knowingly violates such injunction may be required to pay the costs and  
17 attorney's fees incurred by Wilshire or other Released Parties (as that term is defined in  
18 the Settlement Agreement) as a result of the violation.  
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1                   12.     The Settlement Agreement and the proceedings taken and statements  
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3 made pursuant to the Settlement Agreement or papers filed seeking approval of this  
4 Agreement, and this Order, are not and shall not in any event be construed as, offered in  
5 evidence as, received in evidence as, and/or deemed to be evidence of a presumption,  
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7 concession or an admission of any kind by any of the Parties of the truth of any fact  
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9 alleged or the validity of any claim or defense that has been, could have been, or in the  
10 future might be asserted in any litigation, court of law or equity, proceeding, arbitration,  
11 tribunal, investigation, government action, administrative proceeding or other forum, or  
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13 of any liability, responsibility, fault, wrongdoing or otherwise of Wilshire or Plaintiffs.  
14 Wilshire has denied and continues to deny the claims asserted by Plaintiffs. Nothing  
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16 contained herein shall be construed to prevent a party from offering the Settlement  
17 Agreement into evidence for the purposes of enforcement of the Settlement Agreement.

18                   13.     If this Order is reversed or vacated on appeal or otherwise, then the  
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20 class certified pursuant to this Order shall be deemed automatically vacated, and this  
21 Action and the Parties shall revert to the status of the matter before the Settlement was  
22  
23 reached. This order shall be without prejudice to Wilshire's rights to contest all issues in  
24 the Action including (without limitation) all issues under Federal Rule of Civil



1 Procedure 23 relating to the certification of a class, if this Agreement is terminated, is not  
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3 approved, or if the Effective Date does not occur for any reason.

4 14. Wilshire, and the other Released Parties, hereby preserve and do not  
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6 waive their arbitration and mediation rights, if any, should the settlement not be finally  
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8 approved, or with respect to the claims of any class members who opt out of the  
9 settlement.

10 15. Pursuant to 28 U.S.C. § 1715 of the Class Action Fairness Act  
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12 (“CAFA”), counsel for defendants has certified that timely notice of the proposed  
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14 settlement was served upon the Attorney General of the United States and the Attorneys  
15 General for each state in which settlement class members are last known to reside.  
16 Defendants shall also send notice of this order as required by 28 U.S.C. § 1715(b).

17  
18 DATED this 3rd day of April, 2007.

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20 Robert S. Lasnik

21 United States District Judge  
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